

DEPARTMENT OF SOCIAL SERVICES

744 P Street, Sacramento, CA 95814



January 9, 2003

ALL-COUNTY LETTER NO. 03-01

TO: ALL COUNTY WELFARE DIRECTORS
ALL PUBLIC ADOPTION AGENCIES
ALL CDSS ADOPTIONS DISTRICT OFFICES
ALL ADOPTION SERVICE PROVIDERS

REASON FOR TRANSMITTAL

- () State Law Change
- () Federal Law or Regulation Change
- () Court Order or Settlement Agreement
- () Clarification Requested by One or More Counties
- (X) Initiated by CDSS

SUBJECT: INTERSTATE COMPACT ON THE PLACEMENT OF CHILDREN
EXPECTANT MOTHER/CUSTODIAL PARENT TRAVELING TO
CALIFORNIA FOR PURPOSE OF ADOPTION

The purpose of this letter is to provide clarification regarding application of the Interstate Compact on the Placement of Children (ICPC). In California, the ICPC applies to any adoption (agency or independent) under the following circumstances:

1. When a pregnant woman travels to California for the sole purpose of giving birth to a child and placing the child for adoption regardless of whether she is staying in California for a period of time before the birth.
2. When a custodial parent of a child travels to California for the sole purpose of placing his or her child for adoption.

Secretariat Opinion 49 (enclosed) establishes the applicability of the ICPC to circumstances in which an expectant mother travels to another state for the birth of the child with the intention of placing the child for adoption. In the administration of the ICPC, the California Department of Social Services (CDSS) follows the directive of Secretariat Opinions as do most of the other member states.

According to the Association of Administrators of the Interstate Compact on the Placement of Children, the purpose of the ICPC is to ensure that member states cooperate with each other in the interstate placement of children so that:

1. Each child requiring placement shall receive the maximum opportunity to be placed in a suitable environment and with persons having appropriate qualifications to provide a necessary and desirable degree and type of care.

2. The appropriate authorities in a state where a child is to be placed may have full opportunity to ascertain the circumstances of the proposed placement, thereby promoting full compliance with applicable requirements for the protection of children.
3. The proper authorities of the state from which the placement is made may obtain the most complete information on the bases of which to evaluate a projected placement before it is made.
4. Appropriate jurisdictional arrangements for the care of children will be promoted. If requirements of the ICPC are not met when a child is brought into California for the purposes of an independent adoption, the appropriate adoption agency must inform the court of this lack of compliance with the ICPC in the final court report.

As a member state of the ICPC, California requires that all adoptions comply with the ICPC when applicable. Circumstances in which a licensed adoption agency fails to comply with the ICPC will be referred to the CDSS Community Care Licensing Division for appropriate licensing enforcement action.

If you have any questions regarding adoption policy, please contact the Concurrent Planning Policy Unit of the Permanency Policy Bureau at (916) 322-4228. If you have any questions regarding the ICPC, please contact the Out-of-State Placement Policy Unit at (916) 445-0813.

Sincerely,
ORIGINAL SIGNED BY
SYLVIA PIZZINI
SYLVIA PIZZINI
Deputy Director
Children and Family Services Division

Enclosure

c: CWDA

Interstate Compact on the Placement of Children
Secretariat Opinion 49—June 30, 1986

Expectant Mothers. Travel to Another State for Birth

Can a birthmother who comes to State A from another state in order to give birth and then places her child with a State A couple thereby avoid application of Interstate Compact on the Placement of Children? It is suggested that this is consciously done on some occasions with the deliberate intention of avoiding the Compact. However, if the Compact is not circumvented by this maneuver, should the birthmother fill out an ICPC-100A beforehand? Can State A process the placement before the child is delivered?

There are a variety of reasons why people sometimes seek to convert interstate placements into intrastate placements. There is sometimes a desire to save the work of considering the laws of the other state. If the prospective adoptive parents are using a local attorney, they or he may wish to accomplish the entire matter without the need for involving a lawyer in the other state. Usually these reasons have little or nothing to do with protecting the interests of the child. In fact, circumventing laws and procedures specifically designed to protect children in interstate situations may expose both the child and the others involved in risks. Nevertheless, the desire to avoid regulation or to shorten procedures is often a powerful motive. Further, there is sometimes anxiety lest observance of protective laws may bring to light some reason why the placement and adoption should not occur.

If the child is a day old when the birthmother brings it across the state line to State A and delivers it to the attorney or to the prospective adoptive parents, there is no doubt that an interstate placement occurs and that the procedures of the Compact must be followed. The compact applies to "bringing" a child to another state for placement "preliminary to a possible adoption."

If the birthmother comes to State A one day before delivery and, very shortly after giving birth, turns the child over to an attorney or the prospective adoptive parents, it is asked whether the law should not consider the transaction to be intrastate in character and not subject to the protective procedures of the Compact.

Where a child is transferred from the custody of a birthmother to another party at or very soon after the birth, it is a virtual certainty that the arrangements for the placement have occurred before the birth and in specific anticipation of it. Where the State A couple is the recipient of the child and the birthmother is the relinquishing party, it would be sham to describe the transaction as anything other than the placement by a State X "sending agency" with a couple in another state (State A).

Some pregnant women go to maternity homes when they believe that they will place their babies for adoption or when they are undecided as to what they will do. Frequently, these women enter the maternity home a considerable time before birth of the child is expected. The home may be in their own state of residence or in another state. In the latter instances, the circumstances of the particular case may need to be looked at specifically to determine whether they are such as to make the placement of the child an interstate matter or not. In those instances too, an important motivation of the birthmother can be to be away from her own community during a difficult period. However, that has no bearing on whether the placement should or should not be considered an interstate one in character.

In other instances, women go to hospitals in another state merely to use the medical facilities for the birth of their children. This is especially frequent in metropolitan areas situated at state boundaries. The population of the entire area use the medical and hospital resources of the region to

Secretariat Opinion 49—June 30, 1986
cont.

their best advantage and convenience, without regard to the state line. Similar circumstances also can be expected wherever a hospital is near a state boundary. In such instances, it is not appropriate to regard the surrender of a newly born infant by the birthmother to prospective adoptive parent who live in her own state of residence as interstate placement requiring application of the Compact. This is true even when the physical transfer of the child occurs at the hospital in the other state. All of the pre and post transfer aspects of the placement relate to the single state in which both the birthmother and the prospective adoptive parents live.

Where the expectant mother crosses a state line as part of the placement plan and arrangement, the transaction should be viewed as an interstate placement. In enacting the Compact the intent of the state legislatures was not to make the protections of placements depend on mechanical manipulation of the delivery point. Such logistic calculations are nothing more than subterfuges and studied efforts to avoid the intended and normal consequences of the law. Article X of the ICPC directs that the Compact be "liberally construed to effectuate its purposes". As set forth in Article I and evidenced in the entire pattern of the procedures and requirements specified throughout the Compact, the emphasis is on the interstate character of the arrangements. If the arrangement process is interstate, placement is interstate. The definition of "placement" in Article II also supports this interpretation.

There is some difference of view among the states on whether any work can be done on the processing of interstate placements before the child is born. Some take the position that until the birth actually occurs, there is no assurance that there will be an infant and that the full circumstances on the basis of which the placement should be evaluated are not knowable.

We prefer another approach. The time at which the birth is expected is known. The woman's intention to surrender her child is also present, even if there can be a change of mind up to the very moment when a relinquishment is executed, and even during the grace period that many states allow for reconsideration. If the prospective adoptive parents are known and the arrangements are in progress, their personal qualifications and the home environment into which the infant will go can also be studied and evaluated. If all of this is done before the birth occurs, all that will normally remain is to determine the condition of the child and to make a judgment as to whether the already evaluated prospective adoptive parents and their environment are not contrary to the best interests of the child. Consequently, we advise that where a state is willing to do so, it should accept an ICPC-100A and should do most of the processing before the birth occurs. This can shorten and simplify the post birth work and can make the period before approved recipients of a preadoptive placement can receive custody of the child. This can do much to reduce the pressures for neglect and violation of law in the interest of speed.